

**REMARKS:**

Claims 1-19 are presented for examination, with claims 1, 2, 6, 11, 12, 15 and 16 having been amended hereby.

Initially, it is noted that the previous Office Action in this application (i.e., the July 8, 2004 Office Action) had rejected the claims under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter.

While applicant had not necessarily concurred with the Examiner in the Examiner's analysis of the claims of the present application and the applicable patent laws and regulations, in order to expedite prosecution of the application all of the independent claims had been amended in response to that July 8, 2004 Office Action to explicitly relate to a method implemented by a programmed computer system. More particularly, and as suggested by the Examiner, each of the independent claims was amended to recite various steps which may be carried out using such a programmed computer system.

Since the current Office Action (i.e., the August 19, 2005 Office Action) no longer includes a rejection of the claims under 35 U.S.C. 101, it is the understanding of applicant that this prior rejection had been overcome and that the present invention (as recited in the claims) is clearly directed to statutory subject matter.

Turning now to the current Office Action (i.e., the August 19, 2005 Office Action), it is noted (as required by the Examiner) that an abstract on a separate sheet is submitted herewith (the abstract is attached hereto as Exhibit A).

Further, regarding the Examiner's indication (at page 3 of the August 19, 2005 Office Action) that the specification does not include a BRIEF SUMMARY OF THE INVENTION, it is respectfully submitted that the language from 37 C.F.R. 1.77(b) cited by the Examiner indicates that the specification should include the delineated sections but not that the specification must include such sections. Accordingly, it is believed that the structure of the specification meets the applicable requirements and that a BRIEF SUMMARY OF THE INVENTION is not required.

Reconsideration is respectfully requested of the rejection of claims 1-19 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Initially, applicant would like to take a moment to discuss, in general, the working of the

presently claimed invention. In this regard, reference is made to Fig. 1 as well as page 7, line 18 to page 8, line 17.

More particularly, it is noted that a pool includes a first credit (such a credit is a financial mechanism, not a holder as assumed by the Examiner at the bottom of page 3 of the August 19, 2005 Office Action). A first senior holder receives obligated payments from the first credit through a first senior holder financial instrument. Further, a first subordinate holder receives obligated payments from the first credit through a first subordinate holder financial instrument. Of course, the priority of payments from the first credit is to the first senior holder before the first subordinate holder.

The pool also includes a second credit (again, such a credit is a financial mechanism, not a holder as assumed by the Examiner at the bottom of page 3 of the August 19, 2005 Office Action). A second senior holder receives obligated payments from the second credit through a second senior holder financial instrument. Further, a second subordinate holder receives obligated payments from the second credit through a second subordinate holder financial instrument. Of course, the priority of payments from the second credit is likewise to the second senior holder before the second subordinate holder.

In the event that the first credit enters the default state, any payments available from the first credit are first applied to the first senior holder (at the expense of first subordinate holder). To the extent that the payments to first senior holder are still not sufficient to cover the obligation of the first credit, then payments due the second subordinate holder (under the second subordinate holder financial instrument associated with the second credit) are used to cover the obligation to the first senior holder (this is shown by the dashed line marked A in Fig. 1). Finally, to the extent that any benefit remains in the obligation of the first credit to the first senior holder, then the second subordinate holder is provided such remaining benefit (this is shown by the dashed line marked B in Fig. 1).

Of course, if the second credit enters the default state rather than the first credit, then an analogous operation is carried out with regard to the first subordinate holder, the second senior holder and the second credit.

Having thus explained, in general, the working of the presently claimed invention, applicant will now focus on the specifics of the 35 U.S.C. 112 rejection.

More particularly, applicant respectfully disagrees with the Examiner that the claims are “replete with grammatical and idiomatic errors”. In fact, applicant will now address each of the comments made by the Examiner in paragraph 3 of the August 19, 2005 Office Action in turn.

Attention will first be directed to claim 1 and the Examiner’s comment that “first credit” is indefinite because it is unclear to the Examiner if this is senior, subordinate or both.

In this regard it is respectfully submitted that, as explicitly recited in claim 1 (and as described above), under certain delineated circumstances (that is, a default of the first credit and a lack of availability of payments to the first senior holder from the first credit) the payments otherwise due the second subordinate holder from the second credit are used (under the second subordinate holder financial instrument) to perform the obligation of the first credit for the benefit of the first senior holder.

Thus, in this context, the payments due to the first senior holder under the first credit are “senior” to payments due the second subordinate holder under the second credit.

Moreover, regarding the Examiner’s question concerning how the first senior holder would be able to pay the second subordinate holder (assuming bankruptcy or default), the answer is simply that the first senior holder is not necessarily under any obligation to make any payments to the second subordinate holder (of note, the claims have been amended hereby to more clearly recite that an appropriate subordinate holder is repaid to the extent that payments otherwise due the subordinate holder were used to perform the obligation of a credit and to the extent that any benefit remains in the obligation of the credit to a senior holder).

Directing attention now to claim 2 and the Examiner’s comment that “second credit” is indefinite because it is unclear to the Examiner if this is senior, subordinate or both, it is respectfully submitted that the same pattern discussed above in connection with claim 1 would apply (i.e., in the event of a default of the second credit and a lack of availability of payments to the second senior holder from the second credit, the payments otherwise due the first subordinate holder from the first credit are used (under the first subordinate holder financial instrument) to perform the obligation of the second credit for the benefit of the second senior holder).

Directing attention now to claim 4 and the Examiner’s comment that “first credit and second credit” is indefinite because it is unclear to the Examiner if this is senior, subordinate or both, it is respectfully submitted that the same pattern discussed above in connection with claim

1 would again apply.

Directing attention now to claims 5-8 and the Examiner's comment that "first credit" is indefinite because it is unclear to the Examiner if this is senior, subordinate or both, it is respectfully submitted that the same pattern discussed above in connection with claim 1 would again apply (of note, these claims 5-8 add specific repayment mechanisms to provide for the repayment to an appropriate subordinate holder -- as such, these features may help answer the Examiner's questions raised in connection with claims 1 and 2 regarding how the first subordinate holder (in the case of claim 1) and the second subordinate holder (in the case of claim 2) get repaid).

Directing attention now to claim 6 and the Examiner's comment that "subrogation" is unclear and needs a definition, it is respectfully submitted that this term is, in fact, well known and understood by those of ordinary skill in the art.

More particularly, "subrogation" is defined as "to substitute (one person) for another with reference to a claim or right" (The Random House Dictionary Of The English Language, 2<sup>nd</sup> Ed, Unabridged, 1987). Of note, this is essentially the same definition set forth by the Examiner at page 4 of the August 19, 2005 Office Action.

In this regard, claim 6 has been amended hereby to more clearly recite (in conformance with the above definition) that the subrogation is carried out between parties to the financial transaction.

Directing attention now to claim 11 and the Examiner's comments regarding "what is a default state", it is respectfully submitted that claim 11 explicitly defines default state as "when a respective obligation is not met". Further, claim 11 explicitly defines non-default state as "when a respective obligation is met" (of note, applicant is a bit perplexed by this question of the Examiner in connection with claim 11 since the same definitions are used, for example, in claim 1 and were apparently not questioned by the Examiner there).

Finally, it is respectfully submitted that the remainder of the claims utilize language similar to that discussed above, and are therefore similarly clear and definite.

Accordingly, it is respectfully submitted that the rejection of claims 1-19 under 35 U.S.C. 112, second paragraph, has been overcome.

Referring now to the Examiner's "Requirement For Information Under 37 CFR 1.105", it

is respectfully noted that the information requested is being sought. It is respectfully proposed that the information be submitted to the Examiner in a subsequent communication when the information is available (if required, any appropriate Information Disclosure Statement fee will be paid at that time).


In addition, it is noted that this Amendment is fully supported by the originally filed application and thus, no new matter has been added. For this reason, the Amendment should be entered.

Accordingly, it is respectfully submitted that each objection and rejection raised by the Examiner in the August 19, 2005 Office Action has been overcome and that the above-identified application is now in condition for examination on the merits.

Respectfully submitted,  
GREENBERG TRAURIG

Dated: December 19, 2005

By:

  
Matthew B. Tropper  
Registration No. 37,457

Mailing Address:  
GREENBERG TRAURIG  
MetLife Building  
200 Park Avenue  
New York, NY 10166  
(212) 801-2100  
Facsimile: (212) 688-2449